IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Crl.Rev.Pet.No. 211 of 2007()

CC.161/01 OF JFCM, VAIKOM
CRA.66/05 OF ADDL.SESSIONS JUDGE(ADHOC-I), KOTTAYAM

REVN. PETITIONER: PETITIONER/APPELLANT/ACCUSED

P.D.SCARIA, S/O. DEVASSIA,
PULPARAYIL HOUSE, MAJOOR P.O.,
KOTHANALLOOR VILLAGE.

BY ADV. SRI.MOHAN IDICULLA ABRAHAM

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE

---

1. T.K.PAUL, S/O. KURIAN,
THEKKETHOTTIYIL HOUSE, OMALLOORE KARA,
KOTHANALLOOR VILLAGE, POA OF TONY JAMES,
S/O. JAMES, MAKKIL HOUSE, -DO- -DO-

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.P.J.ANILKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 211 OF 2007 B

Dated this the 19th day of September, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.161/2001 on the file of the J.F.C.M., Vaikom challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision

Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner submitted that the complainant had personally handed over Ext.D1 notice dated 9.8.00 on that day itself and if time is reckoned from that day, the complaint was filed beyond the period of limitation. He also submitted that the person, who was examined as PW1 on behalf of the complainant, was the Power of Attorney holder and he had no personal knowledge about the handing over of Ext.D1 notice personally by the complainant before he left for abroad.

5. Both the courts below did not accept the above contention. It is true that the accused produced Ext.D1 notice which is a copy of Ext.P4 statutory notice. PW1 has denied the suggestion that Ext.D1 notice was handed over personally by the complainant to the accused. If the complainant wanted to give notice to the accused with regard to the dishonour, there was no need for him to give a copy of the notice as is evidenced from Ext.D1. On the contrary, he had sent by post Ext.P4 in original to the accused. Ext.P3 is the postal receipt pertaining to the despatch of Ext.P4 notice. The trial court had rightly observed that

the accused /revision petitioner might have managed Ext.D1 copy from the office of the advocate who had despatched Ext.P4 statutory notice. When there is nothing to show that Ext.D1 notice was personally served by the complainant to the accused, the same cannot be relied on to contend for the position that the complaint was filed after the period of limitation. On the merits of the case, the revision petitioner has no valid defence. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

6. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of

compensation under section 357(3) Cr.P.C. a sum of Rs.31,000/- (Rupees thirty one thousand only) within three months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

aks